

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

RENEE SCHROEDER,)	
)	
Plaintiff,)	
vs.)	CIVIL ACTION FILE
)	NO. 1:14-CV-130-HLM
CALEB GILBERT, in his)	
individual capacity,)	
)	
Defendant.)	

- - -

The deposition of OFFICER CALEB GILBERT, taken on behalf of the Plaintiff, taken pursuant to notice and agreement of counsel, taken for the purposes of cross-examination and discovery and any other purpose authorized by the Federal Rules of Civil Procedure;

the reading and signing of the deposition being

reserved; taken before Patricia M. Lesch, Certified

Court Reporter, commencing at 9:00 a.m., on the 31st

day of December, 2014, at 1809 Buford Highway, Buford,

Georgia.

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P R O C E E D I N G S

MR. FILIPOVITS: We're here for the deposition of Caleb Gilbert in the case of Renee Schroeder vs. Caleb Gilbert, Case No. 4:14-CV-130-HLM in the Northern District of Georgia.

This deposition is being taken pursuant to notice and with agreement of opposing counsel. We're going to reserve all objections save for the dreaded objection to the form of the question until the time of trial.

Would you please swear in the witness.

MS. COWAN: He'll read and sign.

MR. FILIPOVITS: Okay.

(Whereupon,

OFFICER CALEB GILBERT,
was called as a witness and having been first
duly sworn, was examined and testified as
follows:)

CROSS-EXAMINATION

BY MR. FILIPOVITS:

Q. Good morning, Officer Gilbert.

A. Good morning.

Q. Could you state your full name for the record.

1 A. Caleb Gilbert.

2 Q. All right. Just some quick ground rules for
3 the deposition. First one, if you need a break, just
4 let me know. We'll finish up whatever questions we're
5 on and take a break.

6 A. Yes, sir.

7 Q. Let's see. If I ask a question that you
8 don't understand, please ask me to rephrase.

9 A. Yes, sir.

10 Q. Please allow me to complete any question
11 before you give an answer for the court reporter's
12 benefit.

13 A. Yes, sir.

14 Q. And as you are already doing, please be sure
15 to answer yes or no if it calls for a yes or no
16 answer, just so the court reporter can take down your
17 response.

18 A. Yes, sir.

19 Q. Are you feeling comfortable today? Anything
20 preventing you from --

21 A. No, sir.

22 Q. -- giving us your full attention?

23 A. No, sir.

24 Q. Okay. Have you ever been deposed before?

25 A. No, sir.

1 Q. All right. Did you review any materials in
2 preparation for this deposition?

3 A. Yes, sir.

4 Q. What materials were those?

5 A. The report, video, and any photographs.

6 Q. Okay. And did you talk to any other
7 witnesses before you came to this deposition?

8 A. No, sir.

9 Q. All right. I'm just going to go into your
10 background a little bit.

11 A. Yes, sir.

12 Q. Tell me how far you went in school.

13 A. I'm currently pursuing a master's degree in
14 public administration.

15 Q. Where are you doing that?

16 A. Liberty University in Lynchburg, Virginia.

17 Q. Is that a distance-learning course?

18 A. That is, sir.

19 Q. Okay. And what is your bachelor's degree
20 in?

21 A. Social science.

22 Q. Where did you get that?

23 A. Kennesaw State University.

24 Q. What year?

25 A. 2005.

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1 Q. Attend any other colleges?

2 A. University of Georgia.

3 Q. Did you get a degree?

4 A. No, sir.

5 Q. What did you study there?

6 A. Accounting.

7 Q. How long were you there?

8 A. A year.

9 Q. And then you transferred to Kennesaw State?

10 A. No. It was after Kennesaw State.

11 Q. Okay. So this was like a postbaccalaureate
12 kind of class?

13 A. Yes, sir. It was a supplementary degree.

14 Q. Okay. Were you a police officer at that
15 time?

16 A. No, I was not, sir.

17 Q. When did you enter the Police Academy?

18 A. 2007.

19 Q. And what prompted you to do that?

20 A. I needed a job that was close to home, which
21 was Cobb County.

22 Q. Are you from Georgia?

23 A. I am.

24 Q. Your family?

25 A. Yes, sir.

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1 Q. Do you have any relatives who reside, we'll
2 say, in the northern portion of Georgia, so say from
3 Atlanta north?

4 A. Yes, sir.

5 Q. Okay. I'm not really interested in names of
6 your relatives, but in case this case should ever get
7 to trial, for the purposes of jury selection, I just
8 need to know some of their names.

9 A. Yes, sir.

10 Q. So are your parents still here?

11 A. Yes, sir.

12 Q. Okay. What are their names?

13 A. Farish, F-A-R-I-S-H, Gilbert. My mother's
14 name is Sandra, S-A-N-D-R-A.

15 Q. All right. Any siblings?

16 A. Yes, sir.

17 Q. And what are their names?

18 A. Pamela Handy.

19 Q. Is that H-A-N-D-Y?

20 A. That's correct.

21 Q. Okay. Only your sister?

22 A. Yes, sir.

23 Q. And what's her husband's name?

24 A. Jason.

25 Q. Jason Handy?

1 A. Yes, sir. I think his actual legal name is
2 Mark, but he goes by Jason, so it may be Mark Jason
3 Handy.

4 Q. Okay. Aunts and uncles in the area?

5 A. Yes, sir.

6 Q. Could you give me their names.

7 A. Richard and Patsy Hallford.

8 Q. And are they -- it doesn't matter how
9 they're related. Disregard that.

10 A. Okay.

11 Q. Other aunts and uncles?

12 A. Yes, sir.

13 Q. Okay. How many are we talking about here?

14 A. Three.

15 Q. Three, okay. Are they in Georgia?

16 A. They are.

17 Q. Okay. Let me have their names too.

18 A. Well, three sets, I should say. You have
19 Larry and Barbara Gilbert, Evelyn and Everett
20 Brackett, and actually the third one is out of state,
21 in Texas.

22 Q. Okay. Grandparents?

23 A. All deceased.

24 Q. And certainly you don't have any kids. If
25 you do have kids, they're all minors, I assume?

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1 A. I don't have kids.

2 Q. No kids, all right. So you entered the
3 academy in 2007. Did you have a job when you entered
4 the academy, with the department, or did you enter
5 without being hired first?

6 A. No, I had a job with the department.

7 Q. Which department?

8 A. Cobb County Police Department.

9 Q. Okay. When did you graduate from the Police
10 Academy?

11 A. October of 2007.

12 Q. And then how long were you with Cobb County?

13 A. I was with Cobb County for a total of five
14 years; however, there was a brief stint after the
15 academy where I took a job with an electrical
16 contracting company for six months.

17 Q. Did you take a leave of absence from Cobb
18 County at that point?

19 A. No, sir, I just left the job.

20 Q. Okay. Then when you came back, did you come
21 back to Cobb County?

22 A. I did.

23 Q. What caused you to leave the job?

24 A. It was a job offer by my father-in-law and
25 his company.

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1 Q. No problems with working at Cobb County?

2 A. No, sir.

3 Q. And then what caused you to go back, to
4 return to Cobb County?

5 A. I enjoy police work.

6 Q. Okay. Have you worked anywhere else besides
7 Cobb County and the City of Dunwoody?

8 A. No, sir.

9 Q. What caused you to move to working for the
10 City of Dunwoody?

11 A. Better pay and benefits.

12 Q. What's your current rank?

13 A. Patrol officer.

14 Q. Okay. Can you give me an idea of what your
15 duties are as a patrol officer.

16 A. Calls for service and, when time allows,
17 proactive law enforcement measures such as making
18 contact with suspicious people or consensual
19 encounters or traffic stops.

20 Q. Do they give you guys take-home cars in the
21 City of Dunwoody?

22 A. They do.

23 Q. Who's your direct supervisor right now?

24 A. My sergeant is Robert Parsons; my lieutenant
25 is Lieutenant David Barnes.

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1 Q. How about the captain above lieutenant?

2 A. We actually don't have captains in Dunwoody
3 yet. It goes from lieutenant to deputy chief. Deputy
4 chief is David Sides, and he's the acting chief.

5 Q. So the deputy chief is also the acting
6 chief?

7 A. For the time being, yes, sir.

8 Q. Okay. How many lieutenants do you guys
9 have?

10 A. Well, we have three, but one per -- we have
11 a administrative/detective lieutenant, we have a day
12 shift lieutenant and a night shift lieutenant.

13 Q. And then how many sergeants under each
14 lieutenant?

15 A. You have an A Team and a B Team. It's
16 pretty self-explanatory that when we're not on, the
17 other shift is, which is B Team. We're A Team. So
18 you have one sergeant per team, A and B, and then you
19 have a swing sergeant. Therefore, you have three
20 sergeants.

21 Q. How many officers total do you guys have?

22 A. Gosh, I would say approximately, officers
23 and detectives combined, maybe 75 to 80 officers.

24 Q. When did you start working for City of
25 Dunwoody?

1 A. June of 2012.

2 Q. Since you have been hired with the City of
3 Dunwoody, have you been subject to any disciplinary
4 action by the department?

5 A. No, sir.

6 Q. Have you had any complaints filed against
7 you?

8 A. Yes, sir.

9 Q. Can you recall what the substance of those
10 complaints were?

11 A. One was a courtesy complaint on the side of
12 the road, and the other was a courtesy complaint as
13 well. Those are the ones that I know of, that I can
14 think of right off the top of my head.

15 Q. Tell me what a courtesy complaint is.

16 A. Courtesy complaint is just -- it can range
17 from the tone of your voice to actually what you say
18 on scene.

19 Q. So the first of the two that you mentioned,
20 can you tell me what the substance of that complaint
21 was.

22 A. One was a woman was asked and then she was
23 told to get off the phone, and then I got the cell
24 phone from her hand and hung it up for her during the
25 middle of an investigation.

1 Q. Was that for a traffic stop?

2 A. It was.

3 Q. And how about the second complaint?

4 A. The second one was a subject was being
5 frisked, and during the frisk, he jerked away from me,
6 and I used that much more force, you know, to hold on
7 to him.

8 Q. Was he injured?

9 A. No, sir.

10 Q. Can you recall the approximate dates? Did
11 these happen this year?

12 A. The one with the cell phone did, and then
13 the one with the jerking away from me, pulling away
14 from me, happened in June of 2012.

15 Q. Okay. You guys have video recorders in your
16 patrol cars; correct?

17 A. That's correct, sir.

18 Q. And the way those work is that they
19 continuously record but overwrite what they're
20 recording until you activate your emergency lights; is
21 that --

22 A. Yes, sir.

23 Q. And at the point you activate your emergency
24 lights, it actually jumps back in time and saves the
25 portion of the video that had previously recorded; is

1 that right?

2 A. Yes, sir.

3 Q. Okay. Do you know how long it jumps back in
4 time?

5 A. 30 seconds.

6 Q. Okay. So let's just jump right into the
7 incident in question here, this lawsuit.

8 A. Okay.

9 Q. So for these question, the incident I'm
10 referring to, for the record, is the August 2, 2013,
11 arrest of Renee Schroeder.

12 A. Yes, sir.

13 Q. And you said that you reviewed your report
14 and the video, and you attended my client's
15 deposition, so you obviously have some recollection of
16 this event; right?

17 A. Yes, sir.

18 Q. Okay. Can you tell me what initially
19 attracted your attention to the car in which my client
20 was riding.

21 A. The reason it was stopped was for swerving
22 and failing to maintain lane.

23 Q. Did you observe those violations?

24 A. Yes, sir, I did.

25 Q. Okay. How long did you wait after you

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1 observed those violations to initiate the stop?

2 A. Probably a minute or two.

3 Q. Why wait for a minute or two?

4 A. Because I was stopped at a traffic light.

5 That's one thing. And then looking for a safe
6 location to pull over. Oftentimes, prior to pulling
7 over people, I often try my best to make sure that I'm
8 going to provide or we're in an area that's going to
9 provide them a safe location to pull over.

10 Q. All right. When you decided to initiate the
11 stop, take me through your procedure for that. So
12 obviously you're going to call back in to Dispatch and
13 let them know that you're going to initiate a stop; is
14 that correct?

15 A. That's correct, yes, sir.

16 Q. Okay. So would that be your first
17 communication about this car with anyone else?

18 A. Yes, sir.

19 Q. Okay. What did you report back to Dispatch?

20 A. That I was making a traffic stop, gave the
21 location, the tag that was displayed on the rear of
22 the vehicle, and then the description of the vehicle.

23 Q. Did you run that tag through your GCIC
24 system or whatever system you guys have to pull up
25 ownership information?

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1 A. I don't recall.

2 Q. Okay. Is that something you typically do in
3 a traffic stop?

4 A. I try to make it a habit, yes, sir.

5 Q. And would you do that before you pulled the
6 car over or after?

7 A. Before I pulled the car over.

8 Q. Okay. What information do you get back when
9 you type the license plate in?

10 A. Whether or not the tag is valid and whether
11 or not they have actual current insurance status for
12 the vehicle.

13 Q. Do you get -- obviously you get ownership
14 information as well?

15 A. Registered owner, yes, sir, I do. I get
16 that as well.

17 Q. Okay. Would it show if the owner has any
18 warrants out for them?

19 A. No, sir.

20 Q. Okay.

21 A. Well, there have been instances where you do
22 run tags and the individual will come back with
23 warrants, but what prompts that, I have no idea.

24 Q. Okay. So is the only information you get:
25 The owner, the insurance, and the validity of the tag?

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1 A. Right. I think there's some lienholder
2 stuff on there as well, which is irrelevant to our
3 duties.

4 Q. Okay. After you activated your emergency
5 lights, you noticed the rear passenger hand something
6 to the front seat passenger. Is that fair to say?

7 A. Yes, sir, it appeared so.

8 Q. Okay.

9 A. There was a lot of movement going on inside
10 the vehicle from what I could tell and from my angle.

11 Q. Were you able to see inside the vehicle even
12 though it was nighttime?

13 A. Yes, sir. I mean, I can see silhouettes,
14 and I can see movement because I do have a spotlight
15 that's placed on the vehicle, and the area in which we
16 pulled over was, you know, somewhat lit compared to
17 other circumstances.

18 Q. Could you see how many passengers were in
19 the car?

20 A. Yes, sir, I saw three passengers.

21 Q. Could you see whether they were male or
22 female?

23 A. Uh-uh (negative).

24 Q. Okay. And when you say you saw an object,
25 is it possible for you to describe what you saw being

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1 passed?

2 A. No, sir.

3 Q. Is that because you don't remember it or
4 because you didn't have a clear view?

5 A. Because I didn't have a clear view.

6 Q. Okay. You didn't observe anything being
7 thrown from the vehicle; correct?

8 A. I did not.

9 Q. Do you recall if you got the name of the
10 person who was the owner of the vehicle before you
11 exited your car?

12 A. No, sir.

13 Q. You don't recall?

14 A. I don't recall.

15 Q. Okay. Now, after you initiated the stop,
16 Mr. Beazer, the driver, took a minute or two to
17 actually stop his car. Does that indicate to you that
18 illegal activity may be afoot?

19 A. Not in and of itself. It's something that
20 adds to reasonable suspicion.

21 Q. Okay. Reasonable suspicion for?

22 A. An officer.

23 Q. Of the commission of a crime?

24 A. No. Kind of rephrase what you're saying
25 there.

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1 Q. Sure, sure. Obviously, if you're pulling
2 the car over, you have reasonable suspicion they've
3 committed a traffic offense?

4 A. Right, right.

5 Q. So you don't need any further reasonable
6 suspicion, but when you see a car take a long time,
7 what additional illegal activity might you suspect in
8 addition to the traffic violation?

9 A. It's a range of situations. It depends on
10 the circumstances in which we are presented with at
11 the time.

12 Situations where you start seeing a lot of
13 movement, obviously officer safety issues are
14 paramount. That's the first thing that you want to be
15 concerned with, making sure that, you know, they're
16 not plotting anything against you.

17 Or it could range all the way to illegal
18 activity, such as open container to drugs. So I mean,
19 there's a lot of things that it could be, but is that
20 in and of itself something I'm going to say "drug
21 activity" or "guns"? No.

22 Q. Okay.

23 A. It's something that would raise suspicion
24 for me.

25 Q. Okay. Now, are you a drug recognition

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1 expert?

2 A. I am.

3 Q. Okay. That obviously means you are trained
4 to give field sobriety evaluations as well; right?

5 A. Yes, sir.

6 Q. Okay. Do you make -- well, let me ask it
7 this way: In the last year, per week, could you
8 estimate how many arrests you've made, you know, on an
9 average week.

10 A. Just general -- just arrest from Dispatch or
11 proactive arrest? Do you want it to be proactive?
12 Kind of be a little bit more specific.

13 Q. Sure, sure. Let's do proactive arrests.

14 A. Okay. Proactive arrests, in the last year,
15 I would say in the neighborhood of 50 to 75.

16 Q. Per week?

17 A. Oh, not per week.

18 Q. Okay.

19 A. I would say one to two.

20 Q. Okay. How about if we include Dispatch
21 arrests?

22 A. You might be able to bump that number up to
23 two to three maybe.

24 Q. Okay. When we say "Dispatch arrests," are
25 we talking about serving warrants mostly?

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1 A. Shoplifters.

2 Q. Okay. I imagine you guys get a lot of that
3 an Ashford Dunwoody?

4 A. Oh, yeah.

5 Q. All right. So after you initiated the stop
6 and Mr. Beazer pulled the car over -- and he parked in
7 LA Fitness parking lot; right?

8 A. Uh-huh (affirmative).

9 Q. And then you approached his door. And do
10 you recall what you said to him first at that point?

11 A. My general practice is to identify myself as
12 a police officer and advise them the reason which they
13 were stopped.

14 Q. Okay. Then after that, do you recall asking
15 him whose car it was?

16 A. No, sir, not at that point.

17 Q. Okay. Did you ask him that at some point?

18 A. Not that I recall -- no. At some point,
19 yes, I did. I did towards the end of the
20 investigation.

21 Q. Okay. Do you recall asking for
22 identification from each of the passengers?

23 A. Yes, sir.

24 Q. Okay. Why did you ask for ID from each of
25 the passengers for a routine traffic stop?

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1 A. I make that a common practice.

2 Q. Have you ever had anyone refuse to give you
3 ID?

4 A. Yes.

5 Q. And how do you react in that situation?

6 A. I don't go any further with it.

7 Q. Is that because, absent some indication of
8 wrongdoing by a passenger, you don't have the
9 constitutional basis to demand identification? Is
10 that your understanding?

11 A. Rephrase that one more time, please.

12 Q. Do you have the lawful authority to demand
13 that a passenger show you their ID?

14 A. It would depend on certain situations, but
15 in the routine traffic stop -- if we can actually deem
16 things as routine in a traffic stop -- the average
17 traffic stop, no, sir.

18 Q. Okay. Tell me exactly what driving
19 violations you observed prior to initiating the stop.

20 A. Failing to maintain lane, a vehicle drifting
21 out of its road of travel, swerving in its roadway as
22 well.

23 Q. Swerving within its roadway?

24 A. That's correct.

25 Q. But you did actually observe it drifting out

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1 of its lane?

2 A. Yes, sir.

3 Q. Did it touch one of the lane lines or --

4 A. Yes, sir.

5 Q. Okay. Do you recall which side of the car?

6 A. I don't. It wasn't mentioned in my report.
7 I don't remember that.

8 Q. Okay. Why didn't you issue a citation for
9 failing to maintain lane?

10 A. I just didn't.

11 Q. So after you pull over the car, you exit,
12 you ask for identification, do you recall asking the
13 driver to exit the vehicle?

14 A. I do.

15 Q. What was the purpose in asking him to exit
16 the vehicle?

17 A. At that point, I have a few things, a few
18 indicators that are starting to click in my head as
19 far as my training is concerned.

20 An individual, or a vehicle, I should say,
21 that takes an extended amount of time to pull over
22 with movement inside, not to mention when you have
23 three individuals that issue you three different state
24 IDs, those are all indicators that raise suspicion to
25 an officer.

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1 Therefore I had him exit the vehicle, and I
2 began to speak with him separately to initiate an
3 investigation to where we can speak with individuals
4 and have a unbiased or a non-influenced response when
5 we're talking to him.

6 Q. Did the driver appear nervous to you?

7 A. Somewhat.

8 Q. How did that nervousness manifest?

9 A. As far as not making general eye contact
10 with me whenever I was speaking with him or, you know
11 -- that's it that I can recall at this time where that
12 was mentioned in my report.

13 Q. At the time you had him exit the car, did
14 you have reason to suspect that he was driving under
15 the influence?

16 A. No, sir.

17 Q. And after he exited the car, your first
18 questions, I believe, related to whether the backseat
19 passenger handed something up to the front. Do you
20 recall that?

21 A. Yes, sir.

22 Q. Okay. At that point, your suspicions were
23 that they were carrying contraband?

24 A. I had suspicions, yes, sir.

25 Q. Okay. And do you recall saying to him after

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1 he exited the car: If there's anything inside the
2 vehicle, now would be the time to tell me?

3 A. Yes, sir.

4 Q. Okay. Is that standard practice?

5 A. Sometimes.

6 Q. What would make that -- what would cause you
7 to make the decision to say that to a person you've
8 pulled over?

9 A. Well, as far as just giving somebody the
10 opportunity, to test the waters and see how the
11 investigation is going to be conducted, you know, as
12 far as honesty is concerned.

13 Q. Okay. And he told you that there was
14 nothing inside the vehicle that he knew of?

15 A. Right. He stated, not that I'm aware of, I
16 believe, specifically.

17 Q. Okay.

18 A. Which is another indicator. If you're
19 driving an automobile, you would assume that you would
20 know everything that's inside the vehicle.

21 Q. Even if you're carrying two passengers?

22 A. Yes, sir. You would know the character of
23 the individuals, or you should know the character of
24 the individuals that you have riding with you.

25 Q. And so at that point, you asked him for

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1 permission to search the vehicle?

2 A. I did.

3 Q. He gave it to you?

4 A. He did.

5 Q. Was your exact phrase: Do I have permission
6 to search your vehicle?

7 A. I don't know if it was my exact phrase.

8 Q. Okay. But is it fair to say that's an
9 accurate paraphrase of what you said?

10 A. Yes, sir.

11 Q. Okay. And he responded and gave you
12 permission; right?

13 A. He did.

14 Q. Okay. And then at some point, a number of
15 other officers arrived on the scene. I believe there
16 were some officers from Sandy Springs; is that right?

17 A. That's correct.

18 Q. Do you know how they wound up coming to the
19 scene?

20 A. They probably were monitoring our radio
21 system, but more specifically, I couldn't answer for
22 them.

23 Q. Did you report back to Dispatch that you
24 were conducting a drug investigation?

25 A. I did not.

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1 Q. Okay. Is it fair to say that at that point
2 you were conducting a drug investigation?

3 A. No, sir.

4 Q. No. Still a traffic investigation?

5 A. It's an investigation to dispel any
6 suspicion that I have.

7 Q. Did you have a partner with you in the car?

8 A. No, I didn't.

9 Q. Was there a second City of Dunwoody police
10 officer there?

11 A. Yes, sir.

12 Q. Who was he?

13 A. Officer Cheek.

14 Q. Is he still with Dunwoody?

15 A. He is.

16 Q. Anyone else from City of Dunwoody?

17 A. Not that I recall.

18 Q. All right. And Officer Cheek arrived in a
19 separate patrol car?

20 A. Yes, sir.

21 Q. Okay. Was he sent out by Dispatch? Do you
22 know?

23 A. Whenever I was pulling the vehicle over,
24 they asked if I wanted a additional unit, and I said
25 that that probably wouldn't be a bad idea, therefore

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1 either he jumped it and said, I'll go, or they
2 dispatched him.

3 Q. Okay. Do you usually request an additional
4 unit for traffic stops?

5 A. No, sir.

6 Q. At what point did you report that it
7 wouldn't be a bad idea for another unit to arrive?

8 A. As we were pulling into the parking lot,
9 where the final stop location was.

10 Q. Okay. And I don't mean to beat a dead horse
11 here, but can you just tell me what you saw at that
12 point that caused you to believe another unit wouldn't
13 be a bad idea.

14 A. Well, when you see individuals -- when you
15 have three individuals inside of a vehicle that are
16 moving around, slow stop or slow gradual descent to,
17 you know, the stop location.

18 Q. Okay. At some point during your
19 investigation, you claimed that you smelled marijuana
20 coming from the car; correct?

21 A. Yes, sir, that's correct.

22 Q. Do you remember the point where you noticed
23 that odor?

24 A. When I was on the passenger side of the
25 vehicle.

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1 Q. And this is obviously after one of the
2 passenger side doors was opened; right?

3 A. Correct, yes, sir.

4 Q. Do you recall which door was opened?

5 A. I believe it was the rear passenger door.

6 Q. Was this a smell of burned or unburned
7 marijuana?

8 A. Raw marijuana, meaning unburnt.

9 Q. Okay. This may be difficult, but can you
10 describe for me the difference between those two
11 smells.

12 A. Yeah. One's burning and one's not.

13 Q. Okay. What about when it's already burned?

14 A. When it's already burned, it smells like
15 burnt marijuana, and then you have marijuana.

16 Q. And do we have three - is there burned,
17 burning, and raw? Are those three distinct smells
18 that you can tell the difference between?

19 A. One's burnt and one's raw.

20 Q. Okay. So what specifically tips you off
21 that it's one smell or the other? Is there anything
22 you can articulate?

23 A. One's burning and one's not.

24 Q. Okay. How were you trained to detect the
25 odor of marijuana?

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1 A. Through actual experience in the field and
2 then having a type -- I guess a controlled burn, if
3 you will, inside of a classroom.

4 Q. Can you describe for me the conditions in
5 which a controlled burn occurred.

6 A. They bring in marijuana and burn it in a
7 classroom.

8 Q. Just in an open classroom?

9 A. You know, just like a college classroom.
10 They bring it in the -- the teacher brings it in and
11 burns it. If I recall correctly, they have it in like
12 -- they have it in like a metal, maybe ashtray or
13 something, and they burn it, and then they walk it
14 around the room.

15 Q. Okay. Is this while you were in the Police
16 Academy, or is this subsequent training?

17 A. Subsequent training.

18 Q. And was that part of the drug recognition
19 expert training or some other training?

20 A. Drug ID or Drug Identification.

21 Q. And is that just the general class that
22 everyone takes, or is that a specialized training?

23 A. It's a specialized training.

24 Q. Okay. Do you guys receive any training how
25 to distinguish between marijuana and other plants or

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1 materials that might smell like marijuana?

2 A. They just bring in marijuana and we smell it
3 that way.

4 Q. Do they give you a list of substances that
5 might smell like marijuana?

6 A. No, sir.

7 Q. Are you aware of any other plants that may
8 mimic the smell of marijuana?

9 A. No, sir.

10 Q. Is it your understanding that if you smell
11 marijuana in the car, that gives you probable cause to
12 search?

13 A. Yes, sir.

14 Q. So you smelled marijuana when the backseat
15 passenger door was opened, and at that point, you
16 asked the backseat passenger to exit the vehicle;
17 right?

18 A. I believe that's the way that it worked out.

19 Q. Okay. And what was her reaction to you
20 saying that the vehicle smelled like marijuana?

21 A. I don't recall.

22 Q. Okay. Did you look through the backseat
23 passenger's purse?

24 A. I don't think she had one.

25 Q. Okay. Did you search her pockets?

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1 A. No, sir.

2 Q. Okay. After you spoke to the backseat
3 passenger, you went on to the front seat passenger,
4 which was Renee Schroeder; correct?

5 A. Yes, sir, if memory serves me correctly.

6 Q. And as she exited the vehicle, she attempted
7 to take her purse with her; right?

8 A. If I remember correctly, yes, sir.

9 Q. Okay. And you told her that you would have
10 to look through her purse?

11 A. I didn't say I had to. I asked for consent
12 to search it.

13 Q. Okay. And did she consent to a search of
14 her purse?

15 A. Yes, sir.

16 Q. How did she do that?

17 A. She handed me the purse.

18 Q. When you took the purse, did you notice the
19 smell of marijuana coming out of her purse?

20 A. Not that I recall.

21 Q. Did you find any marijuana in her purse?

22 A. No, sir.

23 Q. Okay. And as you continued to search the
24 vehicle, did you eventually find any marijuana?

25 A. I did not.

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1 Q. Have you experienced that before, where you
2 smell marijuana, but you can't find it in the vehicle?

3 A. Multiple times, yes, sir.

4 Q. Is it a regular occurrence?

5 A. It's not a regular occurrence. It's over a
6 eight-year period of being in law enforcement or being
7 attached to some type of -- or being in some type of
8 capacity of law enforcement. You know, it happens due
9 to, you know, a lot of circumstances.

10 Q. Did you call Renee's husband at some point
11 during your investigation?

12 A. I did.

13 Q. Were you able to contact him?

14 A. No, sir.

15 Q. What cell phone did you use to call him?

16 A. My work phone.

17 Q. Could you give me that cell phone number.

18 A. Yes, sir. (678) 332-9956.

19 Q. Did you leave a voice mail for him when you
20 called?

21 A. I think so, but we'll just keep it as if my
22 memory serves me correctly, yes, sir.

23 Q. Okay. Do you recall what you said on the
24 voice mail?

25 A. More than likely, it was, Officer Gilbert --

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1 no, I don't recall specifically.

2 Q. Okay. Did you advise him that Renee, you
3 were placing Renee under arrest or --

4 A. I don't recall.

5 Q. Okay. Did he ever call you back?

6 A. No, sir, not that I'm aware of.

7 Q. Okay. Why did you call him?

8 A. Well, you want to make sure that you have a
9 thorough investigation, but more importantly, not only
10 are you dealing with a violation of Georgia Controlled
11 Substances Act, you also might be dealing with a
12 theft.

13 Therefore, you want to make sure that if, in
14 the case that it's a theft, does the victim want to
15 prosecute, and it's a headache to find out three or
16 four days after the fact to, you know, re-accuse it,
17 go back and get, you know, additional charges,
18 especially if it's two felonies.

19 Therefore, you're going to have two first
20 appearances, and if she's bonded out in the process,
21 she's got to be picked back -- you know, a lot of --

22 Q. Now, you don't really care if he wishes to
23 prosecute, do you?

24 A. Yes, sir.

25 Q. You do?

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1 A. Yes, sir, that's my job.

2 Q. So if a victim of a crime says, I don't want
3 to prosecute, will you back off? I understand this is
4 a generalized question so --

5 A. Well, it depends on what type of
6 investigation we're talking about. Domestic violence
7 laws, we have to. The code section says that we shall
8 make an arrest in those instances because we're the
9 prosecutor.

10 However, in situations where two individuals
11 are fighting in public, and whoever is the primary
12 aggressor and whoever is the victim, and the victim is
13 like, no, I don't want to prosecute, I'm not going to
14 waste my time, let alone I'm not going to waste the
15 Court's time.

16 Q. So if Bill Schroeder had said he didn't want
17 to prosecute, would you not have arrested?

18 A. No. She would have been arrested. She was
19 already arrested due to the fact that she was in
20 possession of a controlled substance here in the
21 state.

22 Q. Was she in handcuffs at the time you placed
23 that phone call?

24 A. I don't recall.

25 Q. Okay. Ever have any communication with Bill

1 Schroeder, or William Schroeder?

2 A. Not that I recall.

3 MR. FILIPOVITS: Okay. Tell you what,
4 I'm jumping around here so much, why don't we
5 take five minutes and let me go through, gather
6 everything together, and we'll keep going. All
7 right?

8 THE WITNESS: All right.

9 MR. FILIPOVITS: All right. We're off
10 the record.

11 (Recess taken.)

12 MR. FILIPOVITS: Back on the record.

13 BY MR. FILIPOVITS:

14 Q. You said that Ms. Schroeder, at the point
15 you called Mr. Schroeder, that Renee was under arrest
16 for violation of the Georgia Controlled Substances
17 Act; right?

18 MS. COWAN: Object to the form. I just
19 want to make sure that that was the statement
20 that was made.

21 THE WITNESS: Well, I didn't make that
22 statement. I said that I don't recall what I
23 said on the conversation.

24 BY MR. FILIPOVITS:

25 Q. I'm sorry. Maybe I asked improperly. We'll

1 just start all over again.

2 A. Okay.

3 Q. All right. Could you tell me the facts that
4 you relied upon when you decided that Ms. Schroeder
5 had violated the Georgia Controlled Substances Act.

6 A. Well, in and of itself, being in possession
7 of any controlled substance is a violation of state
8 law if you're not prescribed that medication or if
9 you're not supposed to have that type of drug.

10 Whenever you consider other circumstances,
11 such as the slow descent of the vehicle. Whenever you
12 make contact with the driver, you have him step out,
13 you ask him how he knows the individual in the front
14 or what his relationship to him were, and he states
15 that they're girlfriend/boyfriend.

16 You talk to her. She's not
17 girlfriend/boyfriend at the beginning, and then I
18 confront her -- or not confront her, but I have her
19 clarify her statements, and she ultimately states,
20 yeah, we're boyfriend/girlfriend, which, you know,
21 indicates some type of deception going on with her
22 part.

23 Not to mention the odor of marijuana, and
24 then, whenever you get a pill bottle out that's dated
25 in 2010, if my memory serves me correctly, it's in a

1 location in Pennsylvania. The husband -- or excuse
2 me. The soon to be ex-husband is in North Carolina,
3 and she's in the process of divorcing the individual,
4 who she hasn't seen in over three or four months, and
5 she's in possession of these pills.

6 Not to mention my training also is very
7 specific in the fact that prescription drugs are
8 listed as, you know, in the top five overdose or
9 drug-related deaths in the nation nowadays.

10 Where earlier we were dealing with issues of
11 methamphetamine-related deaths or cocaine-related
12 deaths, now we've started seeing deaths related to
13 antidepressants, CNS stimulants and so forth.

14 And then, like I say, as far as the fact
15 that you have a pill bottle that specifically states
16 that you cannot transfer this pill bottle to another
17 individual, that, in and of itself, the federal ledger
18 of that being on a pill bottle, she's in violation of
19 the Georgia Controlled Substances Act.

20 Q. So anyone who possesses another person's
21 prescription medication is in violation of the Georgia
22 Controlled Substances Act?

23 A. Yes, sir.

24 Q. Even if those pills are in the original pill
25 bottle?

1 A. That's absolutely correct, sir.

2 Q. So for example, last night --

3 You can object to the form of this, but I
4 just want to understand.

5 Last night I picked up some prescriptions
6 for my neighbor, who's just out of the hospital. I
7 had a number of them in my car. The pharmacy
8 dispensed them to me. Was I in violation of the
9 Georgia Controlled Substances Act?

10 A. Technically, yes, sir.

11 Q. Was the pharmacist who dispensed that
12 medication to me in violation of the Act?

13 A. I don't -- I can't speak for a pharmacist.
14 I can only speak based on what I was trained and
15 experience.

16 Q. Wouldn't he be aiding and abetting me in
17 violating the Georgia Controlled Substances Act?

18 A. I can't answer that.

19 Q. Should I have just let my neighbor die next
20 door?

21 MS. COWAN: Object to the form.

22 BY MR. FILIPOVITS:

23 Q. Would you help me get his medication if he
24 needed it? What's a person supposed to do if they
25 can't leave their house?

1 A. That's their issue, between them and their
2 doctor. But we're not dealing with a life-and-death
3 situation here. We're dealing with a Schedule IV drug
4 that she's in possession of that she can't be in
5 possession of based on not only state law, but federal
6 law.

7 Q. Are you familiar with the Code of Federal
8 Regulations? Do you know what that is?

9 A. Not specifically.

10 Q. Okay. I'm going to hand you Plaintiff's
11 Exhibit 1.

12 Here, I've got a copy for you.

13 MS. COWAN: Okay, great.

14 (Plaintiff's Exhibit No. 1 was marked for
15 identification.)

16 BY MR. FILIPOVITS:

17 Q. This is just a printout of a subsection, and
18 if you skip down to that last sentence, you'll see it
19 says: A covered entity may use professional judgment
20 and its experience with common practice to make
21 reasonable inferences of the individual's best
22 interest in allowing a person to act on behalf of the
23 individual to pick up filled prescriptions.

24 A. Uh-huh (affirmative).

25 Q. Do you see that?

1 A. Uh-huh (affirmative).

2 Q. Okay. So if the Code of Federal Regulations
3 permits pharmacists to exercise their judgment in
4 dispensing medication to people acting on behalf of
5 the prescribed individual, how is that consistent with
6 your understanding of the law?

7 MS. COWAN: I'll just object on the
8 basis that this is a code section that doesn't
9 necessarily have any context, and he's not an
10 attorney. I think he can answer your questions,
11 but I'm objecting to the form of the question.

12 MR. FILIPOVITS: That's fine.

13 MS. COWAN: And to the relevance
14 because I don't think this code section is
15 relevant to this particular issue.

16 MR. FILIPOVITS: That's fine.

17 MS. COWAN: You can go ahead and
18 answer.

19 You may need to restate.

20 BY MR. FILIPOVITS:

21 Q. I'm just trying to square my understanding
22 and experience with your --

23 A. Okay.

24 Q. -- interpretation of the law.

25 A. Well, there's actually two ways in which I

1 want to answer this.

2 Q. Okay.

3 A. First, as far as the pharmacist is
4 concerned, in their dispensing those products,
5 16-13-75 actually has -- it references other code
6 sections and gives them the right to do so. It does
7 not give spousal privileges.

8 As far as this is concerned, it mentions --
9 if you isolate a sentence, sure, but if you actually
10 look at it in its totality, it says: Individual in
11 capacity or emergency circumstances.

12 There was no emergency circumstances for her
13 to be in possession of a pill, but that's even more
14 irrelevant because the fact is this: She's in
15 possession of a controlled substance here in the state
16 of Georgia, and that's the reason in which she was
17 taken into custody.

18 Q. What about minors?

19 A. As far as what?

20 Q. Is a parent in violation of the Georgia
21 Controlled Substances Act if they control their
22 child's prescription?

23 A. Once again, that's out of the -- I mean,
24 that's out of the scope of this conversation because
25 this isn't a minor. This is a soon to be estranged --

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1 this is soon to be an ex-husband that lives two states
2 away that has a prescription bottle from 2010.

3 Not to mention, you know, whenever you have
4 situations where individuals acquire illicit drugs and
5 put them in old pill bottles to try to fool or try to
6 conceal their illegal activity. You have a lot of
7 stuff going on here.

8 You know, you're not just looking at the
9 fact of somebody being in possession of it and them
10 being in the car with them or them being en route to
11 that person. She's not even en route to this person
12 to give him pills. So those things considered.

13 Q. Okay. Well, I'll just take this as my
14 opportunity to interview a police officer so that I
15 can determine if I am in violation of the law. If
16 it's irrelevant, then we're never going to say this in
17 court.

18 A. Okay.

19 Q. All right? So I have two elderly parents.
20 If I pick up their prescriptions, your opinion is that
21 I should be arrested?

22 A. You're in violation of the law.

23 Q. Okay.

24 A. But you're not in possession -- you're not
25 telling me what type of prescription you're in

1 possession of. What type of prescription are you in
2 possession of?

3 Even though that's kind of irrelevant, the
4 fact is this: You have an individual that is two
5 states away from a soon to be ex-husband that's with a
6 new boyfriend. Those facts considered go into the
7 arrest.

8 It's just not, hey, I'm going to pick up my
9 spouse's medicine, I'm going straight home, and it's
10 staying inside of a bag, and the count is going to be
11 60 whenever I get the pills and 60 whenever I get
12 home.

13 Q. Okay. So did you have evidence that she was
14 taking that prescription medication?

15 A. No, sir, I didn't.

16 Q. Or that she was dispensing it to anyone
17 else?

18 A. Right. I did not.

19 Q. Okay.

20 A. But once again, she's taken into custody
21 with reference to possession. She's not being taken
22 into custody for dispensing or selling these drugs.

23 Q. Okay. You didn't read my client or inform
24 her of her Miranda rights at any point during her
25 arrest, did you?

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1 A. It wasn't necessary.

2 Q. Is that because you did not engage in any
3 interrogation?

4 A. After her being told she was in custody,
5 that's correct.

6 Q. Okay. You did have an extended conversation
7 with her in the car; correct?

8 A. But those are irrelevant to the facts and
9 circumstances surrounding the case. It's now, you
10 know -- you know, as well as I do, I don't have to,
11 you know, read them a Miranda whenever I'm talking
12 about where they're from and all that kind of stuff.

13 Q. What's a 54?

14 A. A suspicious person or a suspicious
15 activity.

16 Q. Where does that code come from?

17 A. It was our code and signals in Cobb, and
18 various agencies have the similar ones.

19 Q. And that's different than the 10 codes;
20 right?

21 A. Yes, sir.

22 Q. Okay. How many codes are there?

23 A. Hundreds.

24 Q. Is there a list, a written list?

25 A. Well, it just depends. Some agencies have

1 different 10 codes. You have 10 codes, and you have
2 signals. Some agencies use just codes, where others
3 use just signals.

4 Q. Okay. Does the City of Dunwoody have a list
5 of the codes that they use?

6 A. They do.

7 Q. Do you know what that list is called?

8 A. I don't.

9 Q. How would you refer to that document?

10 A. Codes and signals.

11 Q. You recall attending my client's deposition;
12 right?

13 A. I do, yes, sir.

14 Q. Okay. Do you recall the point in which she
15 was in the bathroom, making sounds as if she was
16 vomiting?

17 A. I do.

18 Q. Okay. And do you recall me saying to you
19 that your presence made her very anxious?

20 A. Yes, sir.

21 Q. Okay. Do you recall smiling at me when I
22 said that?

23 A. No, sir.

24 MS. COWAN: Objection.

25 BY MR. FILIPOVITS:

1 Q. Was it your intent to intimidate my client
2 by coming to the deposition?

3 A. No, sir, not at all.

4 MS. COWAN: I'm sorry. He has a right
5 to be at the deposition in this case. He's a
6 party to the case, so he was there to be
7 informed.

8 MR. FILIPOVITS: Sure, that's fine. He
9 can answer it. He's certainly entitled to it.

10 That's why I didn't object to you being
11 there.

12 BY MR. FILIPOVITS:

13 Q. Were you aware that my client attempted to
14 have the deposition conducted via video conference?

15 A. Yes, sir.

16 Q. Okay. Have you seen the judge's order in
17 this case, denying your motion for judgment on the
18 pleadings?

19 A. No, I haven't.

20 Q. Okay. After my client's deposition, you
21 remained parked in your patrol car in our parking lot
22 for a period of time?

23 A. Uh-huh (affirmative).

24 Q. Can you tell me what you were doing at that
25 point.

1 A. I was contacting my supervisor, wanting to
2 know whether or not they wanted me to come in to work
3 or not come in to work and so forth, answering e-mails
4 that I missed.

5 MS. COWAN: As I recall, he and I had a
6 pretty lengthy conversation in the parking lot as
7 well.

8 BY MR. FILIPOVITS:

9 Q. Did you go back to work then?

10 A. I did.

11 Q. And then you actually didn't pull out until
12 I pulled out with my client and her mother. Do you
13 remember that?

14 A. No, sir.

15 Q. No? Do you remember me driving behind you?

16 A. No, sir.

17 Q. No?

18 MS. COWAN: He didn't pull out until I
19 pulled out. We both left about the same time. I
20 know we're kind of making a relevant issue about
21 that.

22 MR. FILIPOVITS: We can put you under
23 oath if you want to testify.

24 MS. COWAN: Okay.

25 BY MR. FILIPOVITS:

1 Q. All right. Let's go through some of these
2 documents. I'm not going to ask you a lot of
3 questions. I just want to make sure I understand what
4 all of them are.

5 A. Okay.

6 (Plaintiff's Exhibit No. 2 was marked for
7 identification.)

8 BY MR. FILIPOVITS:

9 Q. Okay. I'm going to give you Plaintiff's
10 Exhibit 2. Can you identify this document for me.
11 It's three pages.

12 A. Communications Event Report.

13 Q. Okay. And this is the Event Report
14 generated following your stop, the stop at issue in
15 this case; correct?

16 A. Okay.

17 Q. Just help elucidate for me some of the
18 information contained here.

19 A. Okay.

20 Q. In the Radio Log --

21 A. Can I ask you a real quick question about
22 this?

23 Q. Sure.

24 A. I cannot specifically identify this is the
25 type of document that's issued. I don't know where

1 this document came from, whether or not you typed it
2 up yourself or whether or not you got it from our
3 Dispatch.

4 Q. Sure.

5 A. So I don't know if that's relevant.

6 Q. Well, that's fine. But let's -- does this
7 look like an Event Report typically generated by your
8 department?

9 A. That's what I'm -- I've never seen one of
10 these.

11 Q. You don't see these?

12 A. No, sir.

13 Q. Okay. So let's -- if you can, and if you
14 can't answer this, that's fine.

15 A. Okay.

16 Q. Let's go down to the Radio Log. That first
17 line, it looks like there's a unit number, which I
18 assume should be 3232. Was 3232 your unit number?

19 A. Where do you see that? Can you point to it.

20 Q. Under Radio Log in the lower quarter of the
21 page.

22 A. Yeah. It's kind of cut off on one side. I
23 see what you're talking about, though.

24 Q. Okay. Description, it says Dispatched, and
25 then there's a Time Stamp, and it says User, M.

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1 Childers; right?

2 A. Uh-huh (affirmative).

3 Q. If you can answer this, is that an entry
4 that M. Childers would have made following your report
5 to Dispatch?

6 A. Like I say, I can't answer that.

7 Q. Okay. How about -- go over to the second
8 page, Event Log. Have you ever seen an Event Log like
9 this before?

10 A. I have not.

11 Q. Okay. We'll move on to the next one.

12 (Plaintiff's Exhibit No. 3 was marked for
13 identification.)

14 BY MR. FILIPOVITS:

15 Q. This is a nine-page document. If you could
16 skip ahead to page 8 of 9. Have you seen this type of
17 document before? After you get a chance to look at
18 it.

19 A. No, sir.

20 Q. Okay. On that top row of information, it
21 looks like it says Agency, Prime on the heading, the
22 fourth column from the right.

23 A. Okay. I'm there.

24 Q. Okay. And then it says DPD?

25 A. Uh-huh (affirmative).

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1 Q. Do you have any idea what that means?

2 A. I would assume that it means Dunwoody Police
3 Department.

4 Q. Okay. And then underneath that, 3232,
5 that's your unit number; correct?

6 A. I believe that was my unit number for that
7 night.

8 Q. Okay. So assuming that this document wasn't
9 typed up by me in some attempt to trick everyone --

10 A. Oh, no, no, no. I wasn't trying to suggest
11 that. I just don't know.

12 Q. No, I understand. But assuming this
13 document is otherwise, you know, authenticated, does
14 this appear to reflect notes from your traffic stop of
15 the car in which my client was traveling?

16 A. I don't recall. I don't ever look at the
17 notes that Dispatch puts in the call unless it's
18 related to a Dispatch call.

19 Q. Okay. Do you have any idea what that prefix
20 LAW means in front of some of the notes?

21 A. Prefix LAW.

22 Q. It's in braces or in brackets.

23 A. Yeah. I have no idea.

24 Q. Brackets, I mean. Okay. Do you see where
25 it says, on the third line of the notes, where there's

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1 a brace, and it says IN220, another brace?

2 A. I have no idea.

3 Q. No idea what that means?

4 A. No, sir.

5 Q. Okay. All right. We're flying through
6 this. Let's go on to the next one.

7 (Plaintiff's Exhibit No. 4 was marked for
8 identification.)

9 BY MR. FILIPOVITS:

10 Q. All right. On Exhibit 4, take a look at
11 that, and let me know when you've had a chance to look
12 it over. My only question is whether this is the
13 police report you generated following my client's
14 arrest.

15 A. Yes, sir, it looks to be my police report --

16 Q. Okay.

17 A. -- referencing this issue.

18 Q. That's all I've got on that one.

19 A. Okay.

20 (Plaintiff's Exhibit No. 5 was marked for
21 identification.)

22 (Court reporter interruption.)

23 BY MR. FILIPOVITS:

24 Q. Okay. We're up to Exhibit 5. Does the area
25 in this map shown on Exhibit 5, does this reflect the

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1 area in which the traffic stop was conducted?

2 A. Yes, sir, to the best of my knowledge.

3 Q. Okay. Does it appear to be a fair and
4 accurate reflection of that area?

5 A. It appears so.

6 Q. Okay. And the LA Fitness that we see there
7 toward the upper left quadrant, is that the LA Fitness
8 parking lot where my client was stopped?

9 A. Yes, sir.

10 Q. Okay. Can you identify on that map where
11 you observed the traffic violation prior to the stop
12 of the car?

13 A. If my memory serves me correctly, the
14 violation is right there.

15 Q. Okay. Would you mind circling that on the
16 map?

17 A. Yeah. Like I say, to the best of my
18 knowledge and the way my report is.

19 Q. Sure, sure.

20 A. I mean, I can't specifically, from an aerial
21 view map (makes marking).

22 Q. That's fair. And do you recall, to the best
23 of your recollection, where you turned on your blue
24 lights? Would it be possible to mark that on the map?

25 A. No, sir.

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1 Q. Okay. When Mr. Beazer turned into the LA
2 Fitness parking lot, did he turn in there from
3 Perimeter Center West, or was that from Mount Vernon
4 Highway?

5 A. I believe it was Mount Vernon Highway.

6 Q. Okay. So he drove past the Tilted Kilt; is
7 that correct?

8 A. Yes, sir, I believe so.

9 Q. Okay.

10 (Plaintiff's Exhibit No. 6 was marked for
11 identification.)

12 BY MR. FILIPOVITS:

13 Q. All right. You've got in front of you there
14 Exhibit 6. Does that appear to be an accurate copy of
15 the arrest warrant that you sought for my client?

16 A. Yes, sir.

17 Q. Okay. That's all I've got on that one.

18 (Plaintiff's Exhibit No. 7 was marked for
19 identification.)

20 BY MR. FILIPOVITS:

21 Q. All right. There's Exhibit 7. Have you
22 seen this document before?

23 A. No, sir.

24 Q. You haven't?

25 A. No, sir.

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1 Q. So you did not enter these notes?

2 A. I may have entered these notes, but I
3 haven't seen this particular document.

4 Q. Okay. Have you seen a document like this
5 previously?

6 A. No, sir.

7 (Plaintiff's Exhibit No. 8 was marked for
8 identification.)

9 BY MR. FILIPOVITS:

10 Q. All right. I'm going to show you Exhibit 8.

11 A. Okay.

12 MR. FILIPOVITS: This is our request
13 for production.

14 MS. COWAN: All right.

15 BY MR. FILIPOVITS:

16 Q. Have you seen this document before?

17 A. Which document? There's multiple.

18 Q. The entire package.

19 A. I haven't seen the entire package, no.

20 Q. Okay. Well, just do me a favor. Skip to
21 the back of it, the end of it.

22 A. The last page?

23 Q. The last page.

24 A. I'm there.

25 Q. You see there's a Risk Management Policy.

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1 I'm not interested in that.

2 A. Okay.

3 Q. Okay. And then, just in front of the Risk
4 Management Policy is that same document, Exhibit 7,
5 that I showed to you.

6 A. Okay. Yes, sir.

7 Q. Okay. The reason I'm showing it to you in
8 this context -- and if you look ahead of that
9 document, I think you'll see a copy of your report.

10 A. Okay.

11 Q. And I'm just trying to put this into some
12 context. This is how I got it. It was through your
13 document production.

14 A. Okay.

15 Q. I'm just trying to figure out what exactly
16 this is, how it was generated, and who views it.

17 A. Okay.

18 Q. Does seeing it in this context maybe trigger
19 a memory at all?

20 A. To be honest with you, I've kind of lost
21 track of what page you want me to be on.

22 MS. COWAN: This, in that packet.

23 THE WITNESS: Yeah.

24 BY MR. FILIPOVITS:

25 Q. I'm just showing you that it was in this

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1 packet.

2 A. Yeah, yeah, yeah. I've seen it.

3 Q. So do you have any idea what Exhibit 7 shows
4 or how it was generated?

5 A. Yes. It shows her name, date of birth,
6 arrest, alerts, and incidents.

7 Q. Okay. So on the alerts, are these notes
8 that you guys keep on citizens you encounter?

9 A. Yes, sir. We have an RMS System. Is that
10 what you're --

11 Q. Maybe tell me what an RMS System is.

12 A. I don't know what the acronym stands for but
13 it's basically our system in which we do all our
14 report writing and all of our GCIC/NCIC inquiries.

15 Q. Okay.

16 A. And where we get reports from.

17 Q. Okay.

18 A. Actually, you know what? I misspoke. We
19 actually do that on OSSI, which is -- this is not -- I
20 don't think this is RMS related.

21 Q. Okay.

22 A. Maybe, maybe not. But as far as I know.

23 Q. Have you seen a document like this on other
24 people where it shows alerts, arrests, prior
25 incidents?

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1 A. Right. Maybe I'm getting confused of you
2 referencing this document because this specific
3 document I have not seen.

4 Q. Right.

5 A. The contents therein as far as what is her
6 name, date of birth, and all that kind of stuff, yes,
7 I have seen that. I haven't seen that particular
8 document.

9 Q. Okay. Do you have any idea how somebody
10 would access this information?

11 A. I know whenever we run an individual and if
12 we've had prior contact with them, it will show that
13 prior contact in our system.

14 Q. Okay.

15 A. I don't think everybody is in on that
16 system, but I couldn't speak on that, sir.

17 Q. Okay. So you guys do create a log of
18 individuals you encounter?

19 A. Oh, yes, sir, absolutely.

20 Q. And that log is separate from GCIC, for
21 example?

22 A. Yes, sir, that is correct.

23 Q. Okay. And is it policy to create a log for
24 each person you encounter or each person you arrest?

25 A. Well, when you arrest them or any type of

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1 report that you do, it's going to link back to, I
2 guess, an RMS inquiry, if I'm stating it correctly.

3 Q. Okay. And so if another officer, say,
4 arrested Ms. Schroeder again, would they then add to
5 this information contained here already on Exhibit 7?

6 A. I don't know if they would add to it. It
7 would just depend on those circumstances.

8 Q. Okay.

9 A. I mean, if she's updated her address, yes.

10 MR. FILIPOVITS: Okay. I'm going to
11 take five more.

12 MS. COWAN: Okay.

13 (Pause in proceedings.)

14 MR. FILIPOVITS: Back on the record.

15 BY MR. FILIPOVITS:

16 Q. After you placed my client in handcuffs, put
17 her in the back of the patrol car and transported her
18 to jail, you took her to the DeKalb County Jail;
19 correct?

20 A. Yes, sir.

21 Q. Does the City of Dunwoody have a jail?

22 A. No, sir.

23 Q. Okay. So you take everyone you arrest to
24 DeKalb?

25 A. Yes, sir.

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1 Q. Now, at the jail, you were aware that she
2 would be strip-searched; is that true?

3 A. Yes, sir. Not strip-searched.

4 Q. Okay.

5 A. Just regular search.

6 Q. You knew she would at least be spending the
7 evening in jail; right?

8 A. Yes, sir.

9 Q. Until the following morning?

10 A. Yes, sir. Or until the first appearance --
11 not first appearance. Whatever the --

12 Q. Preliminary?

13 A. Preliminary hearing.

14 Q. Okay. So at least until the next day, but
15 the preliminary hearing doesn't have to be for 48
16 hours following arrest. Is that your understanding?

17 A. Yes, sir. It's actually first appearance.
18 That's what I was trying to think of.

19 Q. Sure. There are a number of names for it, I
20 think. And after you took her to the jail, you sought
21 a warrant for her arrest; correct?

22 A. Yes, sir. I don't know if it was at that
23 particular moment because they shut down at 12:00. I
24 don't know what time frame it was. It may have been
25 the next day that I obtained a warrant.

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1 Q. Okay. And then, at the first appearance
2 hearing, were you present at the hearing?

3 A. I was, sir.

4 Q. Okay. Why were you present? Did the judge
5 take any evidence at the hearing?

6 A. No, sir. They make us go to the first
7 appearance if at all possible. Now, if there are
8 conflicts such as we made an arrest -- like that was a
9 weekend, for example.

10 We arrest somebody on Sunday night, we're
11 able to obtain the warrant, but we can't make it to
12 the first appearance because they stop having them at
13 like 10:00 or 10:30, well, in those cases we would
14 have another officer do it the next day for us. But
15 if we're able to go, we're made to go.

16 Q. Do you know the purpose behind making you
17 go?

18 A. No, sir, I didn't find that out. They just
19 make us go. I think it has something to do as far as
20 like the jail not -- because, as far as other
21 experiences that I had, the deputies handled that.
22 Officers don't. I think we're actually, as far as
23 Metro Atlanta area, we're the only ones that do this.

24 Q. Obviously there was no need for a probable
25 cause hearing because you had gotten a warrant;

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1 correct?

2 A. Yes, sir.

3 Q. Okay. So did you speak with the judge at
4 the bond hearing?

5 A. I did.

6 Q. Okay. Well, tell me what you remember of
7 the bond hearing. After her case is called, she
8 appears, tell me what you remember happening next.

9 A. They read the charge, they formally read the
10 charges, and then they asked me criminal history, and
11 they asked me if I had any recommendations for the
12 Court.

13 Q. Okay. And did you have any recommendations?

14 A. Yes, sir. I believe I stood up and said
15 that she was very cooperative, which is standard
16 procedure for me. Whenever I -- you know, I don't
17 take this stuff personally. Just enforcing the laws.

18 Whenever I bring an individual in there, I
19 often tell the judge signature bond, but I leave it to
20 the Court's discretion because I don't want to be
21 disrespectful to the judge or be perceived as being
22 disrespectful.

23 Q. Do you find that judges usually follow your
24 recommendation?

25 A. For the most part.

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1 Q. Did you say anything else at the first
2 appearance?

3 A. Not that I recall.

4 Q. Okay. Did you have other people you
5 arrested who were at that first appearance, or was
6 this client the only one you --

7 A. I think she was the only one.

8 Q. Okay. Did you communicate with anyone in
9 the DeKalb County District Attorney's Office about
10 this case?

11 A. No, I didn't.

12 Q. Are you aware that her charges were dropped?

13 A. I'm aware the charges were dropped, but
14 that's -- you know, that can happen any time due to
15 judicial economy or, you know, a number of
16 circumstances.

17 Q. Did you receive any training on the
18 requirements of the Fourth Amendment in the context of
19 traffic stops?

20 A. Can you be a little bit more specific with
21 your question.

22 Q. Sure. Are you familiar with the notion, the
23 legal doctrine, if you will, of expanding,
24 impermissibly expanding the scope of a traffic stop?

25 A. I'm aware of expanding the scope of a stop.

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1 Q. Okay. Have you received training or
2 education on the requirements of the Fourth Amendment
3 in that context?

4 A. In certain aspects, yes, sir.

5 Q. Tell me what kind of training you received.

6 A. Basically it's described that a reasonable
7 amount of time to be able to conduct an investigation,
8 referencing the reasonable excuse stopping an
9 individual. You know, things can expand that scope;
10 therefore, your time frame can expand until those
11 investigations are wrapped up or completed.

12 Q. Okay. Do you guys have drug dogs in your
13 department?

14 A. No, sir.

15 Q. So if you called a drug dog, would you call
16 the county?

17 A. It varies. It could be the county, Johns
18 Creek, Sandy Springs. Those are the ones that I'm
19 used to requesting.

20 Q. Okay. Could you tell me -- we were talking
21 about your supervising staff earlier. Let's see. I
22 think you said three lieutenants; is that right?

23 A. Yes, sir.

24 Q. Could you tell me their race and gender.

25 A. White male.

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1 Q. All three?

2 A. Yes, sir.

3 Q. Okay. And the deputy chief/acting chief,
4 also white male?

5 A. Yes, sir,

6 Q. How about the sergeants below them?

7 A. Hispanic male, a black male, a white male,
8 and I think -- gosh, I guess two other white males, if
9 my numbers are correct.

10 Q. Okay. That brings us to five sergeants.

11 A. Okay. Then you have two additional white.
12 So you've got three, three, so it should be seven
13 total, so the additional would be white male as well.

14 Q. Okay. So it sounds like five white males,
15 one black male, and one Hispanic male?

16 A. Yes, sir.

17 Q. Okay. All right. Is there any rank between
18 -- does it go patrol officer, then master patrol
19 officer, then sergeant?

20 A. We don't have master patrol officer.

21 Q. Okay. So you just go patrol officer, and
22 then the next rank is sergeant?

23 A. Yes, sir.

24 Q. Is there any rank below patrol officer?

25 A. No, sir.

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1 Q. So of the, say, 80 or so employees -- well,
2 let's not count employees. Is it fair to say about 80
3 officers in the department?

4 A. Yes, sir, I would say. And by "officers,"
5 I'm including detectives in that as well.

6 Q. Sure, okay. So of those 80, we've got seven
7 sergeants, three lieutenants, one chief. So would it
8 be fair to say 69, about, patrol officers?

9 A. I don't know if it's that high.

10 Q. Okay.

11 A. I would say, as far as patrol officers are
12 concerned, I think we try to staff -- gosh, these are
13 staffing issues. I have no idea.

14 Q. Sure, that's fine. What did you say the
15 name of your supervisor was?

16 A. Sergeant Parsons.

17 Q. Parsons. Is he the one who signed off on
18 your police report? Do you recall?

19 A. No, sir. I don't know who it was, but it
20 wasn't him because I don't believe he was a sergeant
21 at the time. What does it say at the bottom?

22 Sergeant Furman.

23 Q. Furman. Was that your sergeant at the time
24 of this incident?

25 A. I don't think so. I think he was one of the

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1 swing sergeants. Obviously you have -- like I was
2 trying to explain to you earlier, on night shift you
3 have C Team, D Team. I was on D Team. D Team has a
4 assigned supervisor; C Team has assigned supervisor.

5 Swing sergeant comes in and could work
6 either shift or fill in for the sergeant whenever they
7 want off, so I don't know if he was my sergeant at the
8 time.

9 Q. Okay.

10 A. He may have been just filling in because I
11 know at one point he was, and then he became the swing
12 supervisor.

13 Q. Okay. When a supervisor signs off on one of
14 your reports, does that indicate that they've read and
15 approve of the report?

16 A. Yes, sir.

17 Q. Okay. Does it indicate that they approve of
18 the arrest itself?

19 A. Yes, sir.

20 Q. Okay.

21 A. I would assume.

22 Q. Have you ever experienced a supervisor who
23 reads a report and then goes to the officer and says,
24 this was not a good arrest?

25 A. No, sir.

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1 Q. Okay. Do your reports have to be reviewed
2 by the end of your shift?

3 A. Yes, sir, I think so. There are
4 circumstances, like I say, especially morning watch,
5 you're getting off late, and you can just turn in a
6 face sheet, which is basically the suspect, victim's
7 information, and then just a brief narrative of why --
8 what brought you into contact with the individual.

9 Q. What role did Officer Cheek play in this
10 investigation?

11 A. A back-up capacity.

12 Q. Did he participate in the investigation at
13 all?

14 A. Very limited. No, sir, to the best of my
15 knowledge, he didn't participate in it.

16 Q. Okay. What other items did you find in Ms.
17 Schroeder's purse? Do you have any recollection?

18 A. No, sir.

19 Q. What explanation did she provide for having
20 her husband's prescription medication?

21 A. If I remember, the reason she had her
22 ex-husband's prescription was because, when they were
23 married, I believe that she would give those pills to
24 him whenever he was feeling anxious.

25 Q. It was your understanding that they were

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1 divorced at the time of this incident?

2 A. Yes, sir. Well, soon to be divorced, to the
3 point where she has another boyfriend, kind of
4 thinking.

5 Q. Married people have boyfriends all the time,
6 though; right?

7 A. You're right.

8 Q. Or girlfriends?

9 A. Yes, sir.

10 Q. Sometimes with approval; sometimes without.
11 Right?

12 A. That's correct.

13 Q. Could you pick up your report for me real
14 quick.

15 A. Okay. I'll use this one.

16 Q. Whatever copy is fine.

17 A. Okay.

18 Q. If you could go to the narrative portion.

19 A. Okay.

20 Q. I believe what you wrote in there is: A
21 traffic stop -- or a traffic violation was observed.
22 Let me see. Yeah, the third sentence.

23 This violation was observed on Perimeter
24 Center West and Crown Pointe Parkway.

25 A. Yes, sir.

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1 Q. Okay. Are you familiar -- I'm probably
2 going to get an objection, but I just want to ask.
3 I've been dying to ask someone about this: Do they
4 teach you guys to write in passive voice?

5 MS. COWAN: I don't know where you're
6 going, but I object to the form.

7 You can answer the question to the extent
8 you can.

9 BY MR. FILIPOVITS:

10 Q. Do they train you guys in the difference
11 between active voice and passive voice?

12 A. Well, they don't train you, but I'm aware of
13 it.

14 Q. It's just I read so many reports, and
15 they're always in passive voice to the point where I
16 don't know, reading it, who observed. You know, you
17 say "the violation was observed."

18 A. Explain it a little bit further as far as
19 what you're saying.

20 Q. Well, if you write "this violation was
21 observed on Perimeter Center West," there is no
22 subject to that sentence. If you say "I observed this
23 violation," there is a subject, and we know who
24 observed it.

25 A. Okay.

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1 Q. I was just curious because I encounter this
2 often.

3 You can object to all this if you want.

4 MS. COWAN: I'm not sure it's relevant,
5 but it's fine.

6 BY MR. FILIPOVITS:

7 Q. I was just curious if it was any attempt at
8 obfuscation.

9 A. No, sir.

10 Q. Okay. All right. It's the sort of thing
11 you can't ask in a trial, so I just need to ask all
12 this. Let's see. Have you been inside the DeKalb
13 County Jail?

14 A. Yes, sir, I have.

15 Q. In the area where the general population is
16 held?

17 A. Not where general population is held, but
18 where people are in holding cells after being taken
19 into custody by the appropriate jurisdiction.

20 Q. Okay. Would it be fair to say you go there
21 often?

22 A. Yes, sir. More so on nights. But now, on
23 day shift, they have transport officers, so I don't go
24 down there except on the weekends.

25 Q. Okay. Have you spoken with Officer Cheek

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1 about this case at all?

2 A. No, sir.

3 Q. Do you have statistics or are you able to
4 get statistics on the number of arrests that you or
5 another officer with your department makes?

6 A. I'm sure that they have those statistics
7 available, but they're not in a statistic form. If I
8 wanted to see how many arrests I've had since I've
9 been at Dunwoody, I would have to put in a date.

10 But it's kind of a tedious process because,
11 say, I want to know what I've done this year as far as
12 arrests or incident reports that I've handled, I would
13 have to go in there, put in the date 12/01/2014 to
14 12/31/2014, and then go through there and count.

15 And some of them, I would just have to
16 assume through the name of the incident, yeah, there
17 was an arrest associated with it, yeah, there was a
18 report associated with it kind of thing.

19 And you'd have to do that for each month
20 counting, and then ultimately tallying, counting
21 arrests that you have for the --

22 Q. So you're telling me you can only search by
23 month or you can only pull the data by month?

24 A. What I'm aware of doing as far as --

25 Q. Sure.

1 A. That's how I would go about doing it. Now,
2 there's probably other easier ways to go about doing
3 that, but none are -- I can't think of any.

4 Q. Do you know if your supervisors or
5 commanders track arrest data or monitor how many
6 arrests each officer makes?

7 A. I have no idea.

8 Q. Okay.

9 A. I will say I have seen stuff come out in
10 e-mail as far as an arrest, but it's so various that I
11 wouldn't be able to say that that's something they do
12 on a regular basis.

13 Q. Do you get performance reviews?

14 A. Yes, sir.

15 Q. How often do those happen?

16 A. Yearly.

17 Q. And are you given some type of standardized
18 assessment in that review?

19 A. If I'm not mistaken, it goes: Exceeds,
20 meets standards, doesn't meet standards, and below
21 standards. I think that's the four categories that
22 you can be listed as.

23 Q. And are you ranked in a number of different
24 areas on each of those?

25 A. Well, I think it's the -- ultimately, yes,

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1 but it boils down to one ranking.

2 Q. Okay. So you're ranked in a number of
3 areas, but you get one overall ranking?

4 A. Right, yes, sir.

5 Q. How many different areas would you say that
6 you guys get ranked in?

7 A. I have no idea.

8 Q. I mean, is it five? Is it a hundred?

9 A. Well, it's obviously less than a hundred. I
10 think the way in which -- I think it's circumstantial
11 to the officer, so as far as -- I have no idea how
12 they do it.

13 Q. Okay. Who conducts that review? Is it the
14 sergeant or the lieutenant?

15 A. I believe the sergeant does the initial
16 review, kicks up the chain of command to the
17 lieutenant, deputy chief, and chief.

18 Q. When did you do your drug recognition expert
19 training?

20 A. 2011 to 2012.

21 Q. Do you recall telling the occupants of the
22 car during your investigation that you weren't
23 interested in a small quantity of marijuana and that
24 it was typically a traffic citation in the state?

25 A. Yes, sir.

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1 Q. Is that how the City of Dunwoody typically
2 deals with marijuana possession?

3 A. Yes, sir. You're issued a citation and
4 taken to jail, and you have to post a cash bond to get
5 out.

6 Q. Okay. So you are arrested? It's not simply
7 a citation?

8 A. Well, you're given a citation, yes, sir.

9 Q. But you're also arrested; right?

10 A. Yes, sir.

11 Q. Although you have the option of only issuing
12 a citation?

13 A. Uh-uh (negative).

14 Q. You don't?

15 A. No, sir.

16 Q. Is that because of department policy?

17 A. I don't know how that works, but I've always
18 been told you cannot -- actually, I believe that it's
19 state law. It's one that you have to post a cash bond
20 on.

21 Obviously there is circumstances which would
22 dictate otherwise, but I'm pretty sure that's listed
23 on the back of a citation as far as those that you
24 have to post cash bonds for.

25 Q. And the offense we're talking about here

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1 would be misdemeanor possession, lesser amounts?

2 A. Yes, sir.

3 Q. Is that also true -- is there a municipal
4 ordinance that also covers possession of marijuana?

5 A. There may be, but I always issue it under
6 state.

7 Q. Okay. Do they provide any guidance to you
8 with regard to whether the charge is state or
9 municipal?

10 A. Not that I'm aware of or been told.

11 Q. You guys do have a Municipal Court system;
12 right?

13 A. We do, sir.

14 MR. FILIPOVITS: I think I'm done, but
15 give me two minutes.

16 (Pause in proceedings.)

17 BY MR. FILIPOVITS:

18 Q. Do you recall exactly where you detected the
19 faint odor of marijuana when you were searching the
20 vehicle or when you were near the vehicle?

21 A. On the passenger side of the vehicle.

22 Q. Did you narrow it down beyond that?

23 A. Not that I recall.

24 Q. Okay. Are you confident that you performed
25 a thorough search?

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1 A. To the best of my ability.

2 Q. At what point did you make the decision to
3 place Ms. Schroeder under arrest?

4 A. Once I located the pills and was able to
5 conduct a investigation. Based on those, with the
6 circumstances that I mentioned earlier, when I was
7 able to consider those with the fact she was in
8 possession of it, that's when I decided to make the
9 arrest.

10 Q. Okay. But you didn't place her in handcuffs
11 at that point; correct?

12 A. No, sir.

13 Q. Did she reveal any incriminating information
14 to you during the conversation on the way to the jail?

15 A. When we got to the jail, she stated that: I
16 was in possession of the pills, and I'll admit that
17 was wrong. I believe that was her exact words.

18 Q. Okay. Aside from that, anything else that
19 you recall?

20 A. Not that I recall, sir.

21 MR. FILIPOVITS: All right. Well, as
22 enjoyable as this has been, I'm afraid I don't
23 have any more questions. Thanks for your time.

24 THE WITNESS: Yes, sir. Thank you.

25 (Deposition concluded at 10:46 a.m.)

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DISCLOSURE

STATE OF GEORGIA

COUNTY OF COBB

DEPOSITION OF: OFFICER CALEB GILBERT

Pursuant to Article 8.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as an independent contractor for American Court Reporting Company, Inc.,

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Option A: The firm has no contract/agreement to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition. The firm will charge its usual and customary rates to all parties in the case, and a financial discount will not be given to any party to this litigation.

(Signature of Attorneys optional)

January 13, 2015

PATRICIA M. LESCH, CCR B-2435

Attorney for Plaintiff

Date:

Attorney for Defendant

Date:

Officer Caleb Gilbert
12/31/2014

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C E R T I F I C A T E

STATE OF GEORGIA)

COUNTY OF COBB)

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the proceedings were reduced to typewriting under my direction and control.

I further certify that the transcript is a true and correct record of the evidence given at the said proceedings.

I further certify that I am neither a relative or employee or attorney or counsel to any of the parties, nor financially interested or otherwise interested in this matter.

This the 13th day of January, 2015.

PATRICIA M. LESCH, CCR B-2435

Officer Caleb Gilbert
12/31/2014

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E R R A T A S H E E T

IN RE: SCHROEDER vs. GILBERT

DEPOSITION TAKEN ON: DECEMBER 31, 2014

I have read the transcript of my deposition and find
that no changes are necessary _____.

Having read the transcript of my deposition, I wish to
make the following changes: (Please state reason.)

Page _____, Line _____: _____

Page _____, Line _____: _____

Page _____, Line _____: _____

Page _____, Line _____: _____

Page _____, Line _____: _____

Page _____, Line _____: _____

_____, OFFICER CALEB GILBERT,
Sworn to and subscribed before me, this the ____ day
of _____, 2015; _____,
County, Georgia.

_____, Notary Public

My commission expires: _____